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Chris Daniel - District Clerk Harris County  
Envelope No. 1327981  
By: Nelson Cuero

2014-29137 / Court: 129

CAUSE NO. \_\_\_\_\_

EUSEBIA GARCIA, INDIVIDUALLY, AS  
REPRESENTATIVE OF THE ESTATE OF  
GABRIEL GARCIA, DECEASED, AND  
AS NEXT FRIEND OF EDUARDO GARCIA,  
A MINOR, AND ANGEL GARCIA

V.

INTERMARINE, LLC; MS "ORION J"  
SCHIFFFAHRTSGESELLSCHAFT UG  
(HAFTUNGSBESCHRANKT) & CO. KG;  
JMS FOURTY-FIFTH SHIPPING CO. LTD.;  
AND JUNGERHANS HEAVY-LIFT-FLEET  
SERVICES GMBH & CO. KG

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION**

TO THE HONORABLE COURT:

COMES NOW, Eusebia Garcia, Individually, as representative of the estate of Gabriel Garcia, deceased, and as next friend of Eduardo Garcia, a minor, and Angel Garcia, Plaintiffs, complaining on behalf of all wrongful death beneficiaries of Intermarine, LLC; MS "ORION J" Schiffahrtsgesellschaft UG (Haftungsbeschränkt) & Co. KG; JMS Fourty-Fifth Shipping Co. Ltd.; and Jungerhans Heavy-Lift-Fleet Services GmbH & Co. KG., Defendants, and at the time of trial will show the following:

**I. Discovery**

Plaintiffs intend to conduct discovery under Level 3 of Rule 190.3, Texas Rules of Civil Procedure.

**II. Parties**

All Plaintiffs are individuals who reside in Pasadena, Harris County, Texas.

The last three digits of Plaintiff Eusebia Garcia's Social Security number are 230.

The last three digits of Plaintiff Eusebia Garcia's driver's license number are 127.

The last three digits of Plaintiff Eduardo Garcia's Social Security number are 384.

The last three digits of Plaintiff Eduardo Garcia's driver's license number are N/A.

The last three digits of Plaintiff Angel Garcia's Social Security number are 778.

**EXHIBIT**

**A**

The last three digits of Plaintiff Angel Garcia's driver's license number are 652.

Defendant, Intermarine, LLC, is a Texas corporation, which maintains its principal place of business in Harris County, Texas. Defendant may be served with process herein by serving citation along with a copy of this petition on its registered agent, William K. Terrill, 55 Waugh Drive, Suite 300, Houston, Texas 77007.

Defendant, MS "ORION J" Schiffahrtsgesellschaft UG (Haftungsbeschränkt) & Co. KG, is a German business entity, which regularly transacts business in Harris County, Texas, but does not maintain a regular place of business in Texas. Accordingly, service is requested pursuant to Article 5 of the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters in which the Central Authority of Germany serves documents or arranges to serve documents by an appropriate agency. Service may be addressed as follows: Boschsraße 31-49733, Haren (Ems), Germany.

Defendant, JMS Forty-Fifth Shipping Co. Ltd., is a business entity organized and existing under the laws of Antigua, which regularly transacts business in Harris County, Texas, but does not maintain a regular place of business in Texas. Accordingly, service is requested pursuant to Article 5 of the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters in which the Central Authority of Antigua serves documents or arranges to serve documents by an appropriate agency. Service is not requested at this time.

Defendant, Jungerhans Heavy-Lift-Fleet Services GmbH & Co. KG., is a German business entity, which regularly transacts business in Harris County, Texas, but does not maintain a regular place of business in Texas. Accordingly, service is requested pursuant to Article 5 of the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters in which the Central Authority of Germany serves documents or arranges to serve documents by an appropriate agency. Service may be addressed as follows: Boschsraße 31-49733, Haren (Ems), Germany.

### **III. Venue**

Venue is proper in Harris County, Texas, pursuant to CPRC §15.002, because it is the county in which one of the defendants resides and where the incident made the basis of this suit occurred.

### **IV. Jurisdiction**

This court has jurisdiction over the subject matter of this lawsuit because the amount in controversy is within the jurisdictional limits of this court.

### **V. Statement of Facts**

On or about May 10, 2014, Gabriel Garcia was working as a longshoreman for his employer, Gulf Stream Marine, at Industrial Terminals on the Houston Ship Channel. He was working in the hold of the MV Industrial Dawn, a vessel owned, chartered or operated by the defendants, Intermarine, LLC; MS "ORION J" Schiffahrtsgesellschaft UG (Haftungsbeschränkt) & Co. KG; JMS Forty-Fifth Shipping Co. Ltd.; and Jungerhans Heavy-Lift-Fleet Services GmbH & Co. KG.

A several-hundred-ton piece of equipment was being loaded into the ship's hold by two cranes, which are part of the vessel's equipment. This process was conducted and directed by the defendants, acting by and through their agents, servants and employees.

The lifting exercise failed, causing the heavy piece of equipment to fall on to Gabriel Garcia in the hold of the ship. Both of Mr. Garcia's legs were traumatically amputated, and he died en route to the hospital.

### **VI. Negligence**

The incident made the basis of this suit was proximately caused by the negligent acts, both of omission and commission, of Defendants.

### **VII. Statutory Authority**

This suit is brought in part pursuant to §§71.022, et seq., of the Texas Civil Practice & Remedies Code, commonly referred to as the "Wrongful Death Act," and pursuant to §71.021 of the Texas Civil Practice & Remedies Code, commonly referred to as the "Survival Statute." It has become necessary to file this suit as a result of the severe injuries sustained by and death

of Gabriel Garcia. Plaintiff Eusebia Garcia is the surviving spouse and representative of the estate of the deceased. Plaintiffs Eduardo and Angel Garcia are natural children of the deceased.

#### **VIII. Wrongful Death and Survival Damages**

Plaintiffs have forever lost their husband and father. Plaintiffs are, therefore, entitled to be compensated for the past and future loss of the companionship, society, love, and affection resulting from the death of Gabriel Garcia, and for the mental anguish, grief and sorrow which they have suffered since his death, and which they will suffer in the future for the rest of their lives.

Plaintiffs Eusebia Garcia and Eduardo Garcia are also entitled to be compensated for the past and future loss of the care, maintenance, support, services, advice, counsel and reasonable contributions of a pecuniary value that they would have received from Gabriel Garcia had he lived.

Gabriel Garcia experienced conscious pain and suffering before his death. Accordingly, the estate of Gabriel Garcia is entitled to recover for physical pain and mental anguish sustained prior to his death.

Accordingly, Plaintiffs are entitled to and herein now sue for a just and reasonable sum that exceeds the minimum jurisdictional limits of this Court. Pursuant to Rule 47, Tex. R. Civ. Proc., Plaintiffs are required, and do affirmatively plead, for monetary relief in excess of \$1,000,000.00.

#### **IX. Interest**

Plaintiffs seek prejudgment and post-judgment interest as permitted by law.

#### **X. Rule 193.7 Notice**

Defendants are hereby notified that Plaintiffs intend to use all documents produced by Defendants in discovery of the trial of this cause, and therefore request that Defendants assert any objection to the authenticity of any document Defendants produce within ten days of its production.

**XI. Request for Disclosure**


Pursuant to Rule 194, request is made that Defendants disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2

**PRAYER**

Plaintiff prays that Defendants be cited to appear and answer herein, and that upon final trial of this matter they have judgment against Defendants, both jointly and severally, for actual damages, prejudgment and post-judgment interest, costs of court, and all other remedies, both at law and at equity, to which this court finds them to be justly entitled.

Respectfully submitted,

TERRY BRYANT PLLC

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